

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**AFFORDABLE CONSTRUCTION
SERVICES, INC., as Assignee,**

Plaintiff,

v.

ERIE INSURANCE EXCHANGE,

Defendant.

No. 1:19-cv-01278-STA-jay

JURY DEMANDED

**ORDER GRANTING DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Defendant Erie Insurance Exchange has filed a motion for partial summary judgment on Plaintiff's claim for statutory bad faith under Tenn. Code Ann. § 56-7-105 and Plaintiff's claim for punitive damages. (ECF No. 25.) Plaintiff has not responded to the motion. For the reasons set forth below, Defendant's motion is **GRANTED**.

The unrefuted facts are as follows.¹ (ECF No. 25-2.) This case arises out of an insurance claim for damages to commercial property owned by New Century Properties, located at 236 Oil Well Road, Jackson, Tennessee 38305. The property was insured under a commercial package policy issued by Defendant to New Century Properties, bearing policy number Q47-0450746, for a policy period of November 4, 2015 to November 4, 2016. The claimed damage to the property allegedly resulted from a wind and/or hail storm event that occurred in March 2016. After the loss

¹ The facts are stated for the purpose of deciding this motion only.

occurred, New Century Properties executed an assignment of the insurance claim in favor of Plaintiff. Plaintiff, as assignee of the insurance claim, is not the holder of the policy.

Defendant asserts that a bad faith claim is not assignable under Tennessee law and that Tenn. Code Ann. § 56-7-105 applies only to the holder of the policy. Defendant reasons that, because bad faith claims are not assignable and Plaintiff is not the holder of the policy, Plaintiff cannot bring an action for statutory bad faith under Tenn. Code Ann. § 56-7-105. Further, under Tennessee law, an assignment of an insurance claim is an assignment of only the policy proceeds themselves. Therefore, as assignee of an insurance claim, Plaintiff's claims are limited to the amount payable for covered damage under the policy itself, which does not include punitive damages.

The Court agrees with Defendant's reasoning. *See Helping Hands Home Improvement, LLC v. Pennsylvania Nat'l Mut. Ins. Co., LLC*, No. 1:20-cv-01006-STA-jay, 2020 WL 2065792, at *1 (W.D. Tenn. Apr. 29, 2020) (granting insurance company's motion to dismiss assignee's bad faith and punitive damages claims). Accordingly, Defendant is entitled to partial summary judgment on Plaintiff's statutory bad faith and punitive damages claim.

IT IS SO ORDERED.

s/ **S. Thomas Anderson**
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: July 23, 2020